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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CLASS ACTION COMPLAINT

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges the following
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of FIG CAPITAL, LLC (“Defendant”),
8 in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s
9 cellular telephone in violation of the Telephone Consumer Protection Act, 47.
10 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National
11 Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
14 a California corporation with its principle place of business also in California, seeks
15 relief on behalf of a Class, which will result in at least one class member belonging
16 to a different state than that of Defendant, a New York company. Plaintiff also
17 seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which,
18 when aggregated among a proposed class in the thousands, exceeds the
19 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
20 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
21 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern
23 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
24 business within the State of California and Plaintiff resides within the County of
25 Alameda.

26 **PARTIES**

27 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
28 is a rooting and plumbing business in Emeryville, California and is a “person” as

¹ defined by 47 U.S.C. § 153 (39).

2 5. Defendant, FIG CAPITAL, LLC (“FIG”), is an entity in the business
3 finance industry, and is a “person” as defined by 47 U.S.C. § 153 (39).

4 6. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the DOE Defendants when
11 such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, each and
13 every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiff is informed and believes that each of the acts and/or omissions complained
17 of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

19 8. Beginning in or around August of 2016, Defendant contacted Plaintiff
20 on Plaintiff's cellular telephone number ending in -6147 in an attempt to solicit
21 Plaintiff to purchase Defendant's services.

22 9. Defendant used an “automatic telephone dialing system” as defined
23 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

24 10. Defendant contacted or attempted to contact Plaintiff from telephone
25 numbers belonging to Defendant, including but not limited to (516) 439-4178.

26 11. Defendant's calls constituted calls that were not for emergency
27 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

28 || 12. Defendant's calls were placed to telephone number assigned to a

1 cellular telephone service for which Plaintiff incurs a charge for incoming calls
2 pursuant to 47 U.S.C. § 227(b)(1).

3 13. During all relevant times, Defendant did not possess Plaintiff's "prior
4 express consent" to receive calls using an automatic telephone dialing system or an
5 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
6 227(b)(1)(A).

7 14. Furthermore, Plaintiff's cellular telephone number ending in -6147
8 has been on the National Do-Not-Call Registry well over thirty (30) days prior to
9 Defendant's initial calls.

10 15. Defendant placed multiple calls soliciting its business to Plaintiff on
11 beginning in or around August of 2016.

12 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
13 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

14 17. Plaintiff received numerous solicitation calls from Defendant within a
15 12-month period.

16 18. Plaintiff is not a customer of Defendant's services and has never
17 provided any personal information, including his telephone number, to Defendant
18 for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's
19 "prior express consent" to receive calls using an automatic telephone dialing
20 system or an artificial or prerecorded voice on his telephone pursuant to 47 U.S.C.
21 § 227(b)(1)(A).

22 19. Despite this, Defendant continued to call Plaintiff in an attempt to
23 solicit its services and in violation of the National Do-Not-Call provisions of the
24 TCPA.

25 20. Upon information and belief, based on Plaintiff's experiences of being
26 called by Defendant, and at all relevant times, Defendant failed to establish and
27 implement reasonable practices and procedures to effectively prevent telephone
28 solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the filing of the complaint.

23. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

24. Plaintiff represents, and is a member of, The DNC Class, consisting

1 of all persons within the United States registered on the National Do-Not-Call
2 Registry for at least 30 days, who had not granted Defendant prior express consent
3 nor had a prior established business relationship, who received more than one call
4 made by or on behalf of Defendant that promoted Defendant's products or services,
5 within any twelve-month period, within four years prior to the filing of the
6 complaint.

7 25. Defendant, their employees and agents are excluded from The
8 Classes. Plaintiff does not know the number of members in The Classes, but
9 believes the Classes members number in the thousands, if not more. Thus, this
10 matter should be certified as a Class Action to assist in the expeditious litigation of
11 the matter.

12 26. The Classes are so numerous that the individual joinder of all of its
13 members is impractical. While the exact number and identities of The Classes
14 members are unknown to Plaintiff at this time and can only be ascertained through
15 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
16 The Classes includes thousands of members. Plaintiff alleges that The Classes
17 members may be ascertained by the records maintained by Defendant.

18 27. Plaintiff and members of The ATDS Class were harmed by the acts of
19 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
20 and ATDS Class members via their cellular telephones thereby causing Plaintiff
21 and ATDS Class members to incur certain charges or reduced telephone time for
22 which Plaintiff and ATDS Class members had previously paid by having to retrieve
23 or administer messages left by Defendant during those illegal calls, and invading
24 the privacy of said Plaintiff and ATDS Class members.

25 28. Common questions of fact and law exist as to all members of The
26 ATDS Class which predominate over any questions affecting only individual
27 members of The ATDS Class. These common legal and factual questions, which
28 do not vary between ATDS Class members, and which may be determined without

1 reference to the individual circumstances of any ATDS Class members, include,
2 but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendant made any telemarketing/solicitation call
5 (other than a call made for emergency purposes or made with
6 the prior express consent of the called party) to a ATDS Class
7 member using any automatic telephone dialing system or any
8 artificial or prerecorded voice to any telephone number
9 assigned to a cellular telephone service;
- 10 b. Whether Plaintiff and the ATDS Class members were damaged
11 thereby, and the extent of damages for such violation; and
- 12 c. Whether Defendant and their agents should be enjoined from
13 engaging in such conduct in the future.

14 29. As a person that received numerous telemarketing/solicitation calls
15 from Defendant using an automatic telephone dialing system or an artificial or
16 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
17 claims that are typical of The ATDS Class.

18 30. Plaintiff and members of The DNC Class were harmed by the acts of
19 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
20 and DNC Class members via their telephones for solicitation purposes, thereby
21 invading the privacy of said Plaintiff and the DNC Class members whose telephone
22 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
23 members were damaged thereby.

24 31. Common questions of fact and law exist as to all members of The
25 DNC Class which predominate over any questions affecting only individual
26 members of The DNC Class. These common legal and factual questions, which do
27 not vary between DNC Class members, and which may be determined without
28 reference to the individual circumstances of any DNC Class members, include, but

1 are not limited to, the following:

- 2 a. Whether, within the four years prior to the filing of this
3 Complaint, Defendant or its agents placed more than one
4 solicitation call to the members of the DNC Class whose
5 telephone numbers were on the National Do-Not-Call Registry
6 and who had not granted prior express consent to Defendant and
7 did not have an established business relationship with
8 Defendant;
- 9 b. Whether Defendant obtained prior express written consent to
10 place solicitation calls to Plaintiff or the DNC Class members'
11 telephones;
- 12 c. Whether Plaintiff and the DNC Class member were damaged
13 thereby, and the extent of damages for such violation; and
- 14 d. Whether Defendant and their agents should be enjoined from
15 engaging in such conduct in the future.

16 32. As a person that received numerous solicitation calls from Defendant
17 within a 12-month period, who had not granted Defendant prior express consent
18 and did not have an established business relationship with Defendant, Plaintiff is
19 asserting claims that are typical of the DNC Class.

20 33. Plaintiff will fairly and adequately protect the interests of the members
21 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
22 class actions.

23 34. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all Classes members is impracticable. Even if every Classes member could
26 afford individual litigation, the court system could not. It would be unduly
27 burdensome to the courts in which individual litigation of numerous issues would
28 proceed. Individualized litigation would also present the potential for varying,

inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

6 35. The prosecution of separate actions by individual Classes members
7 would create a risk of adjudications with respect to them that would, as a practical
8 matter, be dispositive of the interests of the other Classes members not parties to
9 such adjudications or that would substantially impair or impede the ability of such
10 non-party Class members to protect their interests.

11 36. Defendant have acted or refused to act in respects generally applicable
12 to The Classes, thereby making appropriate final and injunctive relief with regard
13 to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

18 37. Plaintiff repeats and incorporates by reference into this cause of action
19 the allegations set forth above at Paragraphs 1-36.

38. The foregoing acts and omissions of Defendant constitute numerous
and multiple negligent violations of the TCPA, including but not limited to each
and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
47 U.S.C. § 227 (b)(1)(A).

24 39. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
25 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
26 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

27 40. Plaintiff and the ATDS Class members are also entitled to and seek
28 injunctive relief prohibiting such conduct in the future.

1
2 **SECOND CAUSE OF ACTION**

3 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
4 **Act**

5 **47 U.S.C. §227(b)**

6 **On Behalf of the ATDS Class**

7 41. Plaintiff repeats and incorporates by reference into this cause of action
8 the allegations set forth above at Paragraphs 1-40.

9 42. The foregoing acts and omissions of Defendant constitute numerous
10 and multiple knowing and/or willful violations of the TCPA, including but not
11 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
12 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

13 43. As a result of Defendant's knowing and/or willful violations of *47*
14 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of
15 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
16 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

17 44. Plaintiff and the Class members are also entitled to and seek injunctive
18 relief prohibiting such conduct in the future.

19 **THIRD CAUSE OF ACTION**

20 **Negligent Violations of the Telephone Consumer Protection Act**

21 **47 U.S.C. §227(c)**

22 **On Behalf of the DNC Class**

23 45. Plaintiff repeats and incorporates by reference into this cause of action
24 the allegations set forth above at Paragraphs 1-44.

25 46. The foregoing acts and omissions of Defendant constitute numerous
26 and multiple negligent violations of the TCPA, including but not limited to each
27 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
28 *47 U.S.C. § 227 (c)(5)*.

47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

48. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-48.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

51. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

52. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C.

1 §227(b)(1), Plaintiff and the ATDS Class members are entitled to and
2 request \$500 in statutory damages, for each and every violation,
3 pursuant to 47 U.S.C. 227(b)(3)(B).

- 4 • Any and all other relief that the Court deems just and proper.

5 **SECOND CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

7 **Act**

8 **47 U.S.C. §227(b)**

- 9 • As a result of Defendant's willful and/or knowing violations of 47
10 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are
11 entitled to and request treble damages, as provided by statute, up to
12 \$1,500, for each and every violation, pursuant to 47 U.S.C.
13 §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- 14 • Any and all other relief that the Court deems just and proper.

15 **THIRD CAUSE OF ACTION**

16 **Negligent Violations of the Telephone Consumer Protection Act**

17 **47 U.S.C. §227(c)**

- 18 • As a result of Defendant's negligent violations of 47 U.S.C.
19 §227(c)(5), Plaintiff and the DNC Class members are entitled to and
20 request \$500 in statutory damages, for each and every violation,
21 pursuant to 47 U.S.C. 227(c)(5).
- 22 • Any and all other relief that the Court deems just and proper.

23 **FOURTH CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

25 **Act**

26 **47 U.S.C. §227(c)**

- 27 • As a result of Defendant's willful and/or knowing violations of 47
28 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled

1 to and request treble damages, as provided by statute, up to \$1,500,
2 for each and every violation, pursuant to *47 U.S.C. §227(c)(5)*.
3

- Any and all other relief that the Court deems just and proper.

4 **JURY DEMAND**

5 53. Pursuant to the Seventh Amendment to the Constitution of the United
6 States of America, Plaintiff is entitled to, and demands, a trial by jury.
7

8 Respectfully Submitted this 21st Day of January, 2020.
9

10 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
11

12 By: /s/ Todd M. Friedman
13 Todd M. Friedman
14 Law Offices of Todd M. Friedman
15 Attorney for Plaintiff
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